

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1409

To amend the Internal Revenue Code of 1986 to reduce compliance costs and administrative burdens in connection with foreign taxes, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1993

Mr. THOMAS of California introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to reduce compliance costs and administrative burdens in connection with foreign taxes, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 TAX CODE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Foreign Tax Simplification Act of 1993”.

6       (b) AMENDMENT OF 1986 CODE.—Except as other-  
7       wise expressly provided, whenever in this Act an amend-  
8       ment or repeal is expressed in terms of an amendment  
9       to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. LIMITED APPLICATION OF UNIFORM CAPITALIZA-**  
4 **TION RULES TO FOREIGN PERSONS.**

5 (A) IN GENERAL.—Section 263A(c) (relating to ex-  
6 ceptions) is amended by adding at the end thereof the fol-  
7 lowing new paragraph:

8 “(7) FOREIGN PERSONS.—This section shall  
9 not apply to any foreign person except to the extent  
10 necessary for the computation of taxable income  
11 under sections 871(b)(2) and 882(a)(2) for purposes  
12 of the taxes imposed by sections 871(b)(1) and  
13 882(a)(1).”

14 (b) EFFECTIVE DATE.—The amendment made by  
15 this section shall apply to costs incurred after December  
16 31, 1993, in taxable years ending after such date.

17 **SEC. 3. DEFINITION OF PASSIVE FOREIGN INVESTMENT**  
18 **COMPANY.**

19 (a) EXCLUSION OF CONTROLLED FOREIGN COR-  
20 PORATIONS.—Section 1296 (defining passive foreign in-  
21 vestment company) is amended by adding at the end  
22 thereof the following new subsection:

23 “(e) SECTION 957 CORPORATIONS.—For purposes of  
24 this part, a foreign corporation shall not be considered a  
25 passive foreign investment company for any day on which

1 such corporation was a controlled foreign corporation to  
2 which section 957(a) applied.”

3 (b) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendment made by  
5 this section shall apply to taxable years of foreign  
6 corporations ending after December 31, 1992.

7 (2) TRANSITION RULE.—If, for the 1st taxable  
8 year to which the amendment made by this section  
9 applies, a foreign corporation which was a passive  
10 foreign investment corporation for any preceding  
11 taxable year is not such a corporation for such 1st  
12 taxable year by reason of such amendment, section  
13 1297(b)(1) of the Internal Revenue Code of 1986  
14 shall not apply to such 1st taxable year and subse-  
15 quent taxable years solely by reason of such corpora-  
16 tion being a passive foreign investment corporation  
17 before such 1st taxable year.

18 **SEC. 4. APPLICATION OF SEPARATE FOREIGN TAX CREDIT**  
19 **LIMITATION FOR NONCONTROLLED SECTION**  
20 **902 CORPORATIONS.**

21 (a) IN GENERAL.—Subparagraph (E) of section  
22 904(d)(1) (relating to separate application of section with  
23 respect to certain categories of income) is amended to read  
24 as follows:

1           “(E) in the case of a corporation, divi-  
2           dends from all noncontrolled section 902 cor-  
3           porations,”.

4           (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 1992.

7   **SEC. 5. EXCHANGE RATE USED IN TRANSLATING FOREIGN**  
8           **TAXES.**

9           (a) ACCRUED TAXES TRANSLATED BY USING AVER-  
10 AGE RATE FOR YEAR TO WHICH TAXES RELATE.—

11           (1) IN GENERAL.—Subsection (a) of section  
12 986 (relating to translation of foreign taxes) is  
13 amended to read as follows:

14           “(a) FOREIGN INCOME TAXES.—

15           “(1) TRANSLATION OF ACCRUED TAXES.—

16           “(A) IN GENERAL.—For purposes of deter-  
17 mining the amount of the foreign tax credit, in  
18 the case of a taxpayer who takes foreign income  
19 taxes into account when accrued, the amount of  
20 any foreign income taxes (and any adjustment  
21 thereto) shall be translated into dollars by using  
22 the average exchange rate for the taxable year  
23 to which such taxes relate.

24           “(B) EXCEPTION FOR TAXES NOT PAID  
25 WITHIN FOLLOWING 2 YEARS.—

1 “(i) Subparagraph (A) shall not apply  
2 to any foreign income taxes paid after the  
3 date 2 years after the close of the taxable  
4 year to which such taxes relate.

5 “(ii) Subparagraph (A) shall not  
6 apply to taxes paid before the beginning of  
7 the taxable year to which such taxes relate.

8 “(C) EXCEPTION FOR INFLATIONARY CUR-  
9 RENCIES.—To the extent provided in regula-  
10 tions, subparagraph (A) shall not apply to any  
11 foreign income taxes the liability for which is  
12 denominated in any currency determined to be  
13 an inflationary currency under such regulations.

14 “(D) CROSS REFERENCE.—

**“For adjustments where tax is not paid within 2  
years, see section 905(c).**

15 “(2) TRANSLATION OF TAXES TO WHICH PARA-  
16 GRAPH (1) DOES NOT APPLY.—For purposes of de-  
17 termining the amount of the foreign tax credit, in  
18 the case of any foreign income taxes to which sub-  
19 paragraph (A) of paragraph (1) does not apply—

20 “(A) such taxes shall be translated into  
21 dollars using the exchange rates as of the time  
22 such taxes were paid to the foreign country or  
23 possession of the United States, and

1 “(B) any adjustment to the amount of  
2 such taxes shall be translated into dollars  
3 using—

4 “(i) except as provided in clause (ii),  
5 the exchange rate as of the time when such  
6 adjustment is paid to the foreign country  
7 or possession, or

8 “(ii) in the case of any refund or cred-  
9 it of foreign income taxes, using the ex-  
10 change rate as of the time of the original  
11 payment of such foreign income taxes.

12 “(3) FOREIGN INCOME TAXES.—For purposes  
13 of this subsection, the term ‘foreign income taxes’  
14 means any income, war profits, or excess profits  
15 taxes paid or accrued to any foreign country or to  
16 any possession of the United States.”

17 (2) ADJUSTMENT WHEN NOT PAID WITHIN 2  
18 YEARS AFTER YEAR TO WHICH TAXES RELATE.—  
19 Subsection (c) of section 905 is amended to read as  
20 follows:

21 “(c) ADJUSTMENTS TO ACCRUED TAXES.—

22 “(1) IN GENERAL.—If—

23 “(A) accrued taxes when paid differ from  
24 the amounts claimed as credits by the taxpayer,

1           “(B) accrued taxes are not paid before the  
2           date 2 years after the close of the taxable year  
3           to which such taxes relate, or

4           “(C) any tax paid is refunded in whole or  
5           in part,

6           the taxpayer shall notify the Secretary, who shall re-  
7           determine the amount of the tax for the year or  
8           years affected.

9           “(2) SPECIAL RULE FOR TAXES NOT PAID  
10          WITHIN 2 YEARS.—In making the redetermination  
11          under paragraph (1), no credit shall be allowed for  
12          accrued taxes not paid before the date referred to in  
13          subparagraph (B) of paragraph (1). Any such taxes  
14          if subsequently paid shall be taken into account for  
15          the taxable year in which paid and no redetermina-  
16          tion under this section shall be made on account of  
17          such payment.

18          “(3) ADJUSTMENTS.—The amount of tax due  
19          on any redetermination under paragraph (1) (if any)  
20          shall be paid by the taxpayer on notice and demand  
21          by the Secretary, and the amount of tax overpaid (if  
22          any) shall be credited or refunded to the taxpayer in  
23          accordance with subchapter B of chapter 66 (section  
24          6511 et seq.).

1           “(4) BOND REQUIREMENTS.—In the case of  
2           any tax accrued but not paid, the Secretary, as a  
3           condition precedent to the allowance of the credit  
4           provided in this subpart, may require the taxpayer  
5           to give a bond, with sureties satisfactory to and ap-  
6           proved by the Secretary, in such sum as the Sec-  
7           retary may require, conditioned on the payment by  
8           the taxpayer of any amount of tax found due on any  
9           such redetermination. Any such bond shall contain  
10          such further conditions as the Secretary may  
11          require.

12          “(5) OTHER SPECIAL RULES.—In any redeter-  
13          mination under paragraph (1) by the Secretary of  
14          the amount of tax due from the taxpayer for the  
15          year or years affected by a refund, the amount of  
16          the taxes refunded for which credit has been allowed  
17          under this section shall be reduced by the amount of  
18          any tax described in section 901 imposed by the for-  
19          eign country or possession of the United States with  
20          respect to such refund; but no credit under this sub-  
21          part, or deduction under section 164, shall be al-  
22          lowed for any taxable year with respect to any such  
23          tax imposed on the refund. No interest shall be as-  
24          sessed or collected on any amount of tax due on any  
25          redetermination by the Secretary, resulting from a



1 refund to the taxpayer, for any period before the re-  
2 ceipt of such refund, except to the extent interest  
3 was paid by the foreign country or possession of the  
4 United States on such refund for such period.”

5 (b) AUTHORITY TO USE AVERAGE RATES.—

6 (1) IN GENERAL.—Subsection (a) of section  
7 986 (relating to foreign taxes) is amended by adding  
8 at the end thereof the following new paragraph:

9 “(3) AUTHORITY TO PERMIT USE OF AVERAGE  
10 RATES.—To the extent prescribed in regulations, the  
11 average exchange rate for the period (specified in  
12 such regulations) during which the taxes or adjust-  
13 ment is paid may be used instead of the exchange  
14 rate as of the time of such payment.”

15 (2) DETERMINATION OF AVERAGE RATES.—  
16 Subsection (c) of section 989 is amended by striking  
17 “and” at the end of paragraph (4), by striking the  
18 period at the end of paragraph (5) and inserting “,  
19 and”, and by adding at the end thereof the following  
20 new paragraph:

21 “(6) setting forth procedures for determining  
22 the average exchange rate for any period.”

23 (3) CONFORMING AMENDMENTS.—Subsection  
24 (b) of section 989 is amended by striking “weight-  
25 ed” each place it appears.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxes paid or accrued in taxable  
3 years beginning after December 31, 1992.

4 **SEC. 6. LOOK-THRU RULES FOR CONTROLLED FOREIGN**  
5 **CORPORATIONS NOT TO APPLY TO SEPARATE**  
6 **CATEGORIES WITH DE MINIMIS AMOUNTS.**

7 (a) IN GENERAL.—Section 904(d)(3)(E) (relating to  
8 look-thru applies only where subpart F applies) is  
9 amended to read as follows:

10 “(E) LOOK-THROUGH APPLIES ONLY WHERE  
11 SEPARATE CATEGORY INCOME NOT DE MINIMIS.—

12 “(i) IN GENERAL.—If the aggregate gross  
13 income in all separate categories of a foreign  
14 corporation for the taxable year is less than the  
15 lesser of—

16 “(I) 5 percent of gross income, or

17 “(II) \$1,000,000,

18 no part of its gross income for such taxable  
19 year shall be treated as income in a separate  
20 category, except that this sentence shall not  
21 apply to any income which (without regard to  
22 this sentence) would be treated as financial  
23 services income.

24 “(ii) PASSIVE INCOME.—Solely for pur-  
25 poses of applying subparagraph (D), passive in-

1           come of a foreign corporation shall not be treat-  
2           ed as income in a separate category if the re-  
3           quirements of section 954(b)(4) are met with  
4           respect to such income.”

5           (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to taxable years beginning after  
7 December 31, 1992.

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